

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,  
vs.  
MOTOROLA, INC., et al.,  
Defendants.

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MOTOROLA MOBILITY LLC, et al.,  
Plaintiffs,  
vs.  
MICROSOFT CORPORATION,  
Defendants.

Case No. C10-1823-JLR

MICROSOFT'S NOTICE OF  
SUPPLEMENTAL AUTHORITY  
REGARDING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

Microsoft respectfully submits as supplemental authority in support of its Opposition (Dkt. No. 740) to Defendants' Motion for Summary Judgment (Dkt. No. 733) the Federal Trade Commission's ("FTC") July 23, 2013 Decision and Order in *In the Matter of Motorola Mobility, LLC, and Google, Inc.*; and the FTC's July 23, 2013 Response to Commenters in the same matter, attached as Exhibits 1 and 2. The FTC's Response to Commenters is relevant to arguments advanced by Motorola concerning the *Noerr-Pennington* doctrine (*see* Dkt. No. 733

at 18–21) and Motorola’s seeking of injunctions on its standard-essential patents (*see id.* at 7–12):

Some commenters express concern that the conduct alleged in the Complaint, and remedied through the proposed Consent Order, is covered by the *Noerr-Pennington* doctrine (“*Noerr*”), which protects the First Amendment right to petition the government for redress of grievances. However, as we have previously stated, we do not believe that imposing Section 5 liability on Google for violating the FRAND commitments MMI made, and Google formally assumed through a letter of assurance to the relevant SSOs, offends the First Amendment. By taking this action, we are doing no more than “simply requir[ing] those making promises to keep them.”

Commenters who raised *Noerr* concerns also question whether the Commission had an adequate factual basis to find reason to believe that Google’s FRAND commitments preclude seeking an injunction or exclusion order against a willing licensee of its SEPs. The Commission believes that the evidence supports its decision. Moreover, multiple courts have reached a similar conclusion on related questions, and there is evidence that some implementers held a similar view and relied on that understanding when developing standard-compliant products.

Ex. 2 at 3.

DATED this 30th day of July, 2013.

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**CERTIFICATE OF SERVICE**

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 30th day of July, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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DATED this 30th day of July, 2013.

/s/ Florine Fujita

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